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S P E E C H

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OF

Mr. E R S K I N E,

IN THE

HOUSE OF COMMONS,

TUESDAY, NOVEMBER 17, 1795,

ON THE DETESTABLE

CONVENTION BILLS.

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SPEECH, &c.

MR. ERSKINE commenced a very animated and argumentative speech, by asserting, that it was extremely difficult to reconcile what he had just heard from the Solicitor General with what had fallen from other Members of the House, of high authority, who had spoken upon the subject. It was not his intention to refer in any particular manner to speeches that had been delivered in the former debates upon this measure; but when leave had been asked to bring in the Bill, an honourable Gentleman, he understood, had said, that the criminal law of the land was amply sufficient for these two purposes—the security of the Government, and the comfort of the People; but that now a particular conjuncture of affairs had arisen, which made it necessary to enact the present law. The Solicitor General, however, had taken a different course; he had asserted, that the present Act was strictly consonant to the principles of the Constitution—an Act that was never thought of in the reign of Charles the Second, after the horrors and confusion of the former reign—an Act that was never dreamt of in the reign of King William, or in the two rebellions that raged in the subsequent reigns—an Act which even the present Ministry never thought of passing, when they suspended that grand palladium of English liberty, the Habeas Corpus Act. And upon what grounds had the learned Solicitor General defended the necessity of passing the present Bill? Upon any fresh treason that existed? Upon any new plots? No. Instead of adducing new evidence—instead of going over the new conspiracies that were supposed to be hatching, the Learned Gentleman had trodden again the dull soil that he had trodden so often before, and had travelled back again to the Meeting that had been held near Sheffield, in which Mr. Yorke, it had been asserted, made a speech highly seditious. Upon that assertion he was very glad to find that the Learned Gentleman had taken a hint from him, and had desisted from pursuing a subject, the impropriety of which, in the present circumstance of Mr. Yorke, being about to
receive

receive the judgment of the Court of King's Bench, he must be fully convinced.

It had pleased the Learned Gentleman to say, that he considered the right of the subject to petition the King and Parliament not to be taken away by the present Bill—not only not to be taken, but even to be rendered safer by it. In contradiction to this position he would maintain, positively and distinctly, that the Bill did absolutely destroy the right of the subject to petition. When the law prohibited a thing to be done, it also prohibited all the means by which such thing might be done; when the law permitted a thing to be done, it also permitted all the means by which such thing might be done. This was one of the clearest maxims of law, and it was by this maxim that he proposed to examine the present Bill. In the first part of the Bill an exception was contained, which, it had been contended, was sufficient to preserve the freedom of the country, for, it excepted meetings called by Lord Lieutenants, Sheriffs, and Justices of the Peace in their particular districts. The Constitution of England was a Constitution of mixed and balanced powers. It gave the people a right to attend to their own interest against the prerogatives of the Crown. Magistrates were elected by the Crown—the exception, therefore, was not in favour of Meetings convened by Magistrates chosen by the People, but of Meetings convened by Magistrates chosen by the Crown.—By the Bill of Rights, a bill by which the king held his crown, the people had a right to petition; and they who had advised his Majesty to a measure so subversive of that right, had advised the king to violate the tenure by which he held his crown, and to disregard his coronation oath. Did the Solicitor General, he would ask, find in the Bill of Rights that the right of assembling and petitioning had been a right claimed with such firmness, because it was a right to be exercised with the permission of magistrates? Oh no, no!—But the Bill of Rights, all—all was forgotten, the principle of alarm seemed to justify every violation of the liberties of the people, and to afford a sufficient pretence for laying waste all the wisdom of our ancestors.

He came now to the main clause in the Bill. The subject might meet and deliberate, notwithstanding the present Bill; and where, had the Solicitor General asked, where is the free

free country, in which a people have been permitted to deliberate without the intervention of the Magistrate? For his own part, he would not, nor was he called upon to decide what constitution was best for a people. It was one thing to make a Government, and another to rob a people of the Government, that had been handed down to them, by their ancestors. "I say," exclaimed Mr. Erskine, "when there does appear an intention on the part of a Government, to commit such a robbery, the people have a right to resist."

In attempting to prove the seditious views of the Societies, the learned Solicitor General had neither cited any of the speeches that had been delivered at Copenhagen House, nor had he even brought down his own Old Bailey speech; but the people were discontented, and would not be quiet. Upon this subject he would read the opinion of a man of the highest abilities and authority—a man whose talents and whose eloquence were of that superior kind, that every thing that came from him, came with a weight that rendered it almost irresistible; he meant the late Earl of Chatham. In the year 1770, when a motion was made by the Marquis of Rockingham, relative to the discontents that had broken out; which discontents he imputed not to any conspiracy of the people against the Government, but to a conspiracy of the Government against the people, that great man, Lord Chatham, had said—"The great defect is here—It corrupts—it vitiates every thing; the people complain of grievances, and until those grievances are redressed, there will neither be union here, nor concord in the people. If we mean to unite the nation, we must convince them that their grievances will be redressed. Have we done so—have we not treated their petitions with contempt?" In the midst of the quotation Mr. Erskine made an allusion to the argument which the Solicitor General had deduced from the attachment of the London Corresponding Society to the principle of universal suffrage; when a Right Honourable Friend of that Learned Gentleman's had brought forward his proposition for a Parliamentary Reform, the principle of universal suffrage had been fearlessly and firmly maintained, and no idea had been entertained of punishing the persons that maintained it. Mr. Erskine now concluded the quotation from Lord Chatham's speech.

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" We should convince the people that we will attend to their complaints.—On that foundation I will recommend peace and harmony to the people, on any other principle I shall never wish to see the Government and the People united again; and I shall almost say, may discord reign for ever!"

That the question should be decided by such a contest, Mr. Erskine did not wish—never would he do or say any thing that did not tend to avert the horrors of a Revolution—a calamity which the supporters of the Bill affected to fear, though that Bill was the most likely method to produce it.

In the whole of the late proceedings and events, one of the most fatal things was, that the higher orders of the people separated themselves too much from the lower orders. They drew a parallel, which, when he considered their enlightened minds, appeared to him to be astonishing, they drew a parallel between the state of France and this country. France had an unreformed Church and an unreformed State—a profligate despotism, and the most profound superstition. There were no gentle gradations of rank; and the Government rose not, as had been said by a celebrated writer, of the English Government, from a broad base to a point. Where was the parallel between such a country and such a Government, and the country and constitution of England?

In speaking of France, he could not avoid expressing his surprise, that when anarchy was at its height in that country, Administration never thought of such a measure as the present—and that now, when a form of regular government was establishing in France, and millions of the people were subsiding into peace, the Minister should avail himself of such an opportunity for outraging every man that had the feelings of an Englishman, by passing an act which repealed and abrogated every principle upon which the British Constitution stood:—That that act was consonant to the principles of the Constitution, had been asserted by the Solicitor General, and upon that assertion he would join issue with him. He would dare any man to bring one law, or to produce one principle of the Constitution, that was not subverted by the Bill.

What did the Bill propose to effect! Suppose he were to do what if the Bill passed he might do, put down his
name

name to a requisition for a meeting, and send word to the magistrate what it was his intention to propound at that meeting—Suppose that this requisition were couched in terms of order and respect—the magistrate received it, and the meeting was held—By the Solicitor General he had been told, that the clause in the Bill saved and protected the right of petitioning. Let the House examine whether it did—If the object of the Meeting was to effect any change in Church or State, there was a law already existing applicable to such a case, as well as to the case of a Meeting for the purpose of exciting dislike to the King's person and government—For all the rest of the proposed measure no law did exist, for indeed our ancestors meant to make the liberties of the people and the security of the government consistent with each other. They prevented by law any attempt to destroy the government; but there the law stopped, and there the law would stop if the people chose—depend upon it they would not, depend upon it they ought not, to suffer such a measure as the present; recurring to the meeting convened in the manner he had alluded to, he would suppose that at such meeting he spoke with severity of the evils that existed, and with firmness of the grievances under which the people laboured—he would suppose, that he said what the Minister himself once said; that as long as the Parliament remained unreformed, no wise and virtuous administration could exist, he would suppose that he did this—could the magistrate disperse the meeting—he affirmed that he could disperse it, and could not be punished.

One of the clauses of the Bill stated, that “in case such meeting shall, by reason of any special circumstances, become dangerous to the public peace, in the judgment of two or more Justices of the Peace, &c.” Here was a discretion given to the Magistrates of the most dangerous kind; where, he would ask, did the Solicitor General find so broad a discretion given before to Magistrates? a discretion too for which they could not be punished—for when the law placed any thing in the discretion of a Magistrate, it could not punish him for any mistake which he might commit in the exercise of that discretion.

If it was the intention of the Ministers to prevent people from meeting, for the purpose of proposing any alteration in
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Church or State, or of exciting dislike to the King's person and Government, there was no necessity for the present Bill, and the provisions inserted in it, for the purpose of producing such an effect, ought to be blotted out. But the fact was, that they were determined to give the Magistrates the power of dispersing public meetings. Of this part of the Bill, he should now proceed to shew the abominable absurdity.

Suppose thirty or forty of the most respectable Magistrates in the country—suppose even that the twelve Judges were to join in proposing a Meeting—two hired hungry jobbing Justices might disperse them all—Could a criminal information be filed against such Magistrates for so doing? The Court of King's Bench had determined a case this morning that might be applied on the present instance. A law had been passed in the reign of James the First, authorising the Magistrates to search for a particular kind of leather. Under this law a search had been ordered by a Magistrate, a seizure had been made, and upon examination, the person from whom the leather had been seized, had been acquitted—a question arose whether an action would lay against the Magistrate for having ordered such a seizure? It had been decided in the affirmative, because the particular law allowed no discretion to the Magistrate.

Mr. ERSKINE now quoted part of the charge of Baron Eyre to the Grand Jury, previously to the trial of Hardy, for the purpose of proving, that great as that Judge's authority was in matters of law, he was not much of a prophet, for he had predicted that no such law to prevent the freedom of meeting and of discussion would ever be passed.

"The principles of Government, the Chief Baron said in that charge, the Constitution of the particular Government under which we live, will naturally, and ought, to engage the attention and examination of every enquiring man, on which he has a right to form his opinion. The power of thought is the gift of God, and the freedom of communicating thought is the first and the best blessing of society, and therefore as the Divine Law permits the freedom of thoughts, so human laws should not prevent the freedom of communicating them. The communication of opinion then ought to be, and was, free."

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By the present Bill it was provided, that whenever any Meeting departed from the object for which it was convened, the Magistrates might disperse it. Thus for the express purpose of dispersing a Meeting, a spy, totally unconnected with the persons who called the Meeting, might propose something wholly foreign to the object of the Meeting, and then the Magistrates might immediately disperse it. That there would be no want of such spies, experience had fully proved.

If it could be made out, that the existing laws were insufficient for the fair objects of good government, he would very willingly accede to any measure that proposed to make them sufficient; but he contended, first, that the offences mentioned in the Bill could even now be punished; and, second, that the existing laws were amply sufficient for such punishment.

When America was proceeding to acts of violence, a Right Hon. Gentleman, whose talents and whose eloquence would carry down the present age to posterity, (he meant Mr. Burke) deprecated all rigorous measures. He told the House to give America her rights; and he said that he pardoned much to the spirit of liberty.—To-day, however, nothing was to be pardoned to the spirit of liberty. In the concluding part of the speech which Mr. Burke had made upon the above occasion, he had said, “that the principles of our forefathers had lost almost all their influence; that there was a greater anxiety to obtain power, than to use that power for the purposes of good Government—that a standing army was no longer looked upon with horror—that the higher ranks seemed to withdraw themselves more and more from the lower ranks, and that the principle of honest equality seemed now to be dispersed.” “Gentlemen,” exclaimed Mr. Erskine, “will see by this, that the word EQUALITY is not a word of new coinage, and introduced into the dictionary only three years ago, but a word of long and ancient usage, and stamped with the sanction of such a man as Mr. Burke. In my opinion, the higher ranks do ill in thus seceding from the lower. If the latter have swerved from their duty, would it not be better for the former to rally them round the principles of the Constitution, and lead them back to their duty, than thus to make, as it
were

were, a separate cause against them. Let those higher ranks recollect what must be the certain consequence of any contest between them and the lower ranks. Such a contest I am sure I deprecate; and it is because I deprecate it, that I thus wish the higher ranks to take it into their most serious contemplation. What distraction has seized the House? You have said, that from the convulsed state of France you expect better terms of Peace. Will she not do the same with you? If you give her reason to suppose that you are convulsed, will she not expect better terms of Peace from you on account of such convulsion? Good God! because a Prince, whose morals make him dear to every man in the nation, was going down to his Parliament during a War that has snatched the bread from the mouths of the poor; because in the crowd that surrounds him there is one man miscreant enough to offer an outrage to that Prince—because, I say, of that one man, the outrage committed by him, and which I affirm is punishable by the statute of Edward the Third, is to be charged against the whole people of England, and we are to be deprived of our most valuable rights and privileges. As there is always a disposition to exaggerate all events, the French will be induced by our proceedings to form an idea that there is a wish to change the Government of the country, and to introduce such a Constitution as that of France, and they will make you spend twenty millions more in the prosecution of the War.

Mr. ERSKINE now entered into a legal argument to prove that the offences recapitulated in the present Bill, could be punished by the existing laws, and that those laws were amply sufficient.

He alluded first to the 13th of Charles II.—Under that act, 100,000 persons might assemble, and sign any petition to the King or the Parliament voluntarily, but the act prevented any persons from hawking about Petitions, to persons to sign it, who might not know that any grievances existed. It also provided, that not more than ten persons should present any petition to the King.

The present law, however, was to prevent persons from ever meeting again.—An unreformed Parliament had been alluded to—an unreformed Parliament had occasioned many wars—it occasioned the American war—and, worse than that,

that, it occasioned the present most weak and wicked war. An unreformed Parliament too would occasion more mischief. That the Societies should complain of this evil, was surely not to be wondered at. But though the Societies had done this, had they raised the standard against the Constitution of the country? In arguing this question, he desired not to be answered by old records that had been produced on the trials—by that mass of matter which had so wearied the patience of every man—by those letters which had been produced upon every subject.

He desired not to be answered by such documents, because he contended that in the trials that had occurred the issue that had been joined was, aye or no; whether the real object of the Societies was a Reform in Parliament, or whether that was only a pretence to cover the most traiterous designs against the Constitution.—This was the issue to which the Chief Justice Eyre had alluded in his charge to the Grand Jury. In that charge he had said “If there be ground to consider that the Reform of Parliament had been a mere colour and pretext laid hold of, as a design against the Government of the country, in that case he had already stated what his opinion was upon that subject, and the only question in such event would be, Whether or not the matter of fact could be proved?”

The Chief Justice had also said, that “if these Associations meant nothing more than a redress of grievances, and to have nothing else in view, then of course no charge could be made against them.” The issue, therefore, was, whether the real object of the Societies was a Reform in Parliament, or a design to destroy the Constitution. The Indictment against the prisoners expressly charged them with holding a Convention with a view to depose the King, and to destroy the Constitution. By acquitting them, therefore, the Jury had decided that no such design to destroy the Constitution existed. They had not given their verdict from a disagreement with the Judge on the point of law, but they had founded it on the principle of the fact, that had been alleged, not having been proved.

He had said, secondly, that the existing laws were sufficient for the punishment of the offences recapitulated in the present Bill, because, if persons assembled for any unlawful purposes,

purposes, those assemblies were unlawful assemblies, and might be punished as such. If there were tumultuous proceedings, the Magistrate might, under the statute of Henry IV. (which Lord Mansfield, in the case of Lord George Gordon, held to be still in force) take sureties from persons guilty of such proceedings, and might take the *posse comitatus*, to disperse such tumultuous meetings. He therefore contended, that no man could be guilty of any of the overt acts that had been mentioned, without being affected by the laws as they now existed. There was, lastly, the Riot Act, the provisions of which were fully sufficient for the dispersing of illegal meetings. Nor, by the laws as they stood now, was it necessary that a person should be actually doing an unlawful act, in order to subject him to punishment; for in the case of the King against Boyce, it was held, that though the defendant had not been actually concerned in the pulling down of mills, yet, as he had in the meeting of persons so employed, waved his hat, and approved of the proceedings, he came within the meaning of the act, and was held to have been guilty of felony.

On the whole view of the subject, therefore, he was clearly of opinion that the existing laws were amply sufficient; that they did not require any extension, and that there was no necessity for the present Bill. That Bill he felt to be a daring attack upon the principles of the Constitution—he felt and saw also that Ministers, at a time when every thing should be done to restore harmony and peace to the country, were adopting measures, that not only tended not to produce such an effect, but tended to swell the sum of public grievances, and to lay the foundation for fresh discontents in the minds of the people.

F I N I S.



